

**NOT FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

**FILED**

**OCT 25 2005**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**ALEXANDER DJORDJEVIC,**

Plaintiff - Appellant,

v.

**THE CITY & MUNICIPALITY OF  
WALNUT CREEK; WALNUT CREEK  
PLANNING COMMISSION;  
WALNUT CREEK  
REDEVELOPMENT AGENCY; KEN  
NODDER; TERRY RING, JR.;  
BROADWAY INVESTORS & THEIR  
SUCCESSOR IN INTEREST,**

Defendants - Appellees.

No. 04-15310

D.C. No. CV-03-04199-MMC

**MEMORANDUM\***

Appeal from the United States District Court  
for the Northern District of California  
Maxine M. Chesney, District Judge, Presiding

Submitted October 20, 2005\*\*  
San Francisco, California

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Before: **KOZINSKI** and **FERNANDEZ**, Circuit Judges, and **HATTER**,<sup>\*\*\*</sup>  
District Judge.

Djordjevic failed to bring a timely administrative mandamus action in state court to challenge the revocation of his conditional use permit. See Cal. Civ. Proc. Code §§ 1094.5, 1094.6(b). Thus, the administrative decision to revoke his permit has the effect of a final state court judgment. See Johnson v. City of Loma Linda, 5 P.3d 874, 876 (Cal. 2000); Westlake Cmty. Hosp. v. Superior Court, 551 P.2d 410, 421 (Cal. 1976); Briggs v. City of Rolling Hills Estates, 47 Cal. Rptr. 2d 29, 33 (Cal. Ct. App. 1995).

We are required to give preclusive effect to the findings of state administrative tribunals in subsequent civil rights actions. See Univ. of Tenn. v. Elliott, 478 U.S. 788, 799 (1986); Miller v. County of Santa Cruz, 39 F.3d 1030, 1032–38 (9th Cir. 1994). Preclusion “extend[s] to state administrative adjudications of legal as well as factual issues, even if unreviewed, so long as the state court proceeding satisfies the requirements of fairness outlined in [United States v. Utah Construction & Mining Co., 384 U.S. 394, 422 (1966)].” Miller, 39 F.3d at 1032–33 (second alteration in original) (quoting Guild Wineries &

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<sup>\*\*\*</sup> The Honorable Terry J. Hatter, Jr., Senior United States District Court Judge for the Central District of California, sitting by designation.

Distilleries v. Whitehall Co., 853 F.2d 755, 758 (9th Cir. 1988)). Djordjevic does not claim the revocation proceeding failed to meet these requirements.

Djordjevic's argument that the equal protection violation did not occur until another restaurant was granted a conditional use permit at the same location but subjected to conditions different from those imposed on him misses the mark. That another restaurant was granted a permit subject to different conditions might be proof of an equal protection violation. But the violation itself, if any, occurred at the time he was denied his permit. See Knox v. Davis, 260 F.3d 1009, 1013 (9th Cir. 2001). Djordjevic litigated his claim of disparate treatment during the course of the administrative proceedings, and that claim was resolved against him. Subsequently acquired proof of the alleged violation does not resuscitate a claim that was resolved against him in the prior proceedings.

**AFFIRMED.**